



C o u n t y o f S a n L u i s O b i s p o

## GENERAL SERVICES AGENCY

Janette D. Pell, Director

Helen McCann, Department Administrator

**REQUEST FOR PROPOSALS PS-#1157  
ENVIRONMENTAL SERVICES FOR FIVE BRIDGE PAINTING PROJECTS  
IN SAN LUIS OBISPO COUNTY**

December 7, 2011

The County of San Luis Obispo (County) is currently requesting proposals for environmental services for five bridge painting projects in San Luis Obispo County.

Each proposal shall specify each and every item as set forth in the attached specifications. Any and all exceptions must be clearly stated in the proposal. Failure to set forth any item in the specifications without taking exception may be grounds for rejection. The County reserves the right to reject any and all proposals and to waive any irregularity or informality in any proposal or in the Request for Proposal process, as long as, in the judgment of the County, such action will not negate fair competition and will permit proper comparative evaluation of the proposals submitted.

This Request for Proposal is posted on the County's Purchasing website at [http://www.slocounty.ca.gov/GSA/Purchasing/Current\\_Formal\\_Bids\\_and\\_Proposals.htm](http://www.slocounty.ca.gov/GSA/Purchasing/Current_Formal_Bids_and_Proposals.htm). Any changes, additions, or deletions to this Request for Proposal will be in the form of written addenda issued by the County. Any addenda will be posted on the website. Prospective proposers must check the website for addenda or other relevant new information during the response period. The County is not responsible for the failure of any prospective proposer to receive such addenda. All addenda so issued shall become a part of this Request for Proposal.

If your firm is interested and qualified, please submit four (4) hard copies and one (1) electronic copy (on CD or DVD) of your proposal on December 30, 2011, by 3:00 p.m. to:

County of San Luis Obispo  
Debbie Belt, GSA - Purchasing  
1087 Santa Rosa Street  
San Luis Obispo, CA 93408

If you have any questions about the proposal process, please contact me. All questions pertaining to the content of this Request for Proposal must be made in writing via e-mail to Katie Drexhage at: [kdrexhage@co.slo.ca.us](mailto:kdrexhage@co.slo.ca.us). All questions will receive a response within five (5) business days. Questions and responses will be posted (anonymously) on the County's Purchasing web site located at the Purchasing web site link above. The County reserves the right to determine the appropriateness of comments/questions that will be posted on the website.

DEBBIE BELT  
Buyer – GSA Purchasing  
[dbelt@co.slo.ca.us](mailto:dbelt@co.slo.ca.us)

**Section 1.      PROPOSAL SUBMITTAL PROCESS AND SELECTION**

- 1.1. All proposals, consisting of four (4) hard copies and one (1) electronic copy (on CD or DVD) must be received by mail, recognized carrier, or hand delivered no later than 3:00 p.m. on Friday, December 30, 2011. Late proposals will not be considered and will be returned, unopened.
- 1.2. All correspondence should be directed to:

San Luis Obispo County  
Department of General Services  
1087 Santa Rosa Street  
San Luis Obispo, CA 93408  
ATTENTION: DEBBIE BELT  
Telephone: (805) 781-5903
- 1.3. All costs incurred in the preparation and submission of proposals and related documentation will be borne by the proposer.
- 1.4. It is preferred that all proposals be submitted on recycled paper, printed on two sides.
- 1.5. Selection of qualified proposers will be by an impartial Selection Committee using an approved County procedure for awarding professional contracts. Selection will be made on the basis of the proposals as submitted, although the County reserves the right to interview applicants as part of the selection process. The proceedings of the Selection Committee are confidential, and members of the Selection Committee are not to be contacted by the proposers.
- 1.6. This Request for Proposal does not constitute an offer of employment or to contract for services.
- 1.7. The County reserves the option to accept or reject any or all proposals, wholly or in part, received by reason of this request, and make more than one award, or no award, as the best interests of the County may appear.
- 1.8. All documents submitted to the County in response to this Request for Proposal will become the exclusive property of the County and may be returned to the proposer or kept by the County, in the County's sole discretion.
- 1.9. All proposals shall remain firm for one hundred twenty, (120) days following closing date for receipt of proposals.
- 1.10. The County reserves the right to award the contract to the firm who presents the proposal which in the judgment of the County, best accomplishes the desired results, and shall include, but not be limited to, a consideration of the professional service fee.
- 1.11. Any contract awarded pursuant to this Request for Proposal will incorporate the requirements and specifications contained in this Request for Proposal. All information presented in a proposer's proposal

will be considered binding upon selection of the successful proposer, unless otherwise modified and agreed to by the County during subsequent negotiations.

- 1.12. The successful proposer is expected to execute a contract similar to the contract in Appendix A. This sample contract is for reference to the anticipated terms and conditions governing the County and the successful proposer. The proposer must take exception in their proposal to any section of the attached contract they do not agree with. Failing to do so will be deemed as acceptance by the proposer to the terms spelled out in the sample contract. The County reserves the right, in its sole discretion, to add, delete, or modify, or negotiate additional terms and conditions to the attached contract. BEFORE BEGINNING ANY WORK OR SUBMITTING A PROPOSAL IT IS ADVISED THAT PROPOSERS READ THE COUNTY INSURANCE AND INDEMNIFICATION REQUIREMENTS IN THE ATTACHED SAMPLE CONTRACT. The selected proposer will be asked to provide evidence that County insurance requirements have been met. See Appendix A – Sample County Contract, and in the Sample County Contract the insurance requirements are found in Exhibit A.
- 1.13. Under the provisions of the California Public Records Act (the “Act”), Government Code section 6252 et seq., all “public records” (as defined in the Act) of a local agency, such as the County, must be available for inspection and copying upon the request of any person. Under the Act, the County may be obligated to provide a copy of any and all responses to this Request for Proposal, if such requests are made after the contract is awarded. One exception to this required disclosure is information which fits within the definition of a confidential trade secret [Government Code section 6254(k)] or contains other technical, financial or other data whose public disclosure could cause injury to the proposer’s competitive position. If any proposer believes that information contained in its response to this Request for Proposal should be protected from disclosure, the proposer MUST specifically identify the pages of the response that contains the information by properly marking the applicable pages and inserting the following notice in the front of its response:

**NOTICE:** *The data on pages \_ of this response identified by an asterisk (\*) contain technical or financial information, which are trade secrets, or information for which disclosure would result in substantial injury to the proposer’s competitive position. Proposer requests that such data be used only for the evaluation of the response, but understands that the disclosure will be limited to the extent the County considers proper under the law. If an agreement is entered into with the proposer, the County shall have the right to use or disclose the data as provided in the agreement, unless otherwise obligated by law.*

The County will not honor any attempt by proposer to designate its entire proposal as proprietary. If there is any dispute, lawsuit, claim or demand as to whether information within the response to the Request for Proposal is protected from disclosure under the Act, proposer shall indemnify, defend, and hold harmless, the County arising out of such dispute, lawsuit, claim or demand.

- 1.14. An electronic copy of your proposal must be included. This electronic copy should include all documents being submitted combined into one Adobe Acrobat (pdf) file on a CD, using this convention for the file name: FIRM NAME + RFP NUMBER

*Example:* Your firm, Acme Inc., is responding to RFP PS-#1101. Your Adobe Acrobat (pdf) file would be named: **Acme 1101**

**1.15. Disadvantaged Business Enterprises (DBE) Requirements.**

The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. This contract is subject to the Title 49, Part 26, Code of Federal Regulations (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. Please see Exhibit F, "Notice to Proposers Disadvantaged Business Enterprise Information," for additional information.

The County of San Luis Obispo has established an Underutilized Disadvantaged Business Enterprise (UDBE) goal of 0%, however in order to ensure Caltrans achieves its federally mandated statewide overall DBE goal, the County encourages the participation of DBEs, as defined in 49 CFR 26, in the performance of this contract

**CONSULTANT SELECTION PROCESS**

**A. Selection Committee**

A selection committee will evaluate written proposals and other submitted documentation based on the criteria below. Firms may be invited to oral interviews before the selection committee. If interviews are required, only the specifically identified project team members, led by the designated project manager, will be asked to appear.

**Evaluation Criteria**

Understanding of scope of work
Firm's experience with similar work
Qualifications and experience of key staff
Familiarity with state and federal procedures
Demonstrated technical ability

These criteria may include any other information the County deems relevant without notice to proposers.

**B. Cost and Contract Negotiations**

Once a preferred consultant is identified, the County will conduct negotiations to set hourly billing rates and classifications, overhead rates and other compensation. In addition, consultants will be expected to accept the standard County contract language for environmental consulting services agreements (see Attachment A).

**C. Final Selection**

Final selection of the consultant for any project will be made by the Director of Public Works, based on the selection committee's evaluation of their proposal submittals, the results of the possible oral interview, and terms of contract language negotiated with the County.

**SECTION 2. PROPOSAL FORMAT AND CONTENT**

Proposals must be submitted in sufficient detail to allow for thorough evaluation and comparison. Proposals should be as brief and concise as possible without sacrificing clarity.

All proposals must contain the following information, in sectionalized format. It is important that proposals provide all the information requested, and in the format requested, in order to provide for comparative evaluation.

A qualifying proposal must address all of the following points and shall be in the format outlined in this section:

2.1. Project Title

2.2. Applicant or Firm Name

The proposal must be signed by an individual authorized to bind the offer of the proposal. Include the following contact information:

- a. Name of firm, name of contact person, firm address, and telephone number of the person who may be contacted during the period of the proposal evaluation,
- b. Name, address, telephone number, and fax number of the individual authorized to negotiate on behalf of, and contractually bind, the consultant.

2.3. Acknowledgement of Contract Provisions

Standard contractual provisions required by the County are provided in this RFP and attachments, including conflict of interest, insurance and nondiscrimination provisions. Consultants should review the terms of the contract to ensure their proposal is consistent with its provisions. Include a statement acknowledging and accepting contract provisions which will be required for firms under services contract. Consultants should be aware that contract provisions relative to indemnification and insurance are non-negotiable.

2.4. Firm Qualifications

- a. Type of organization, size, professional registration and affiliations.
- b. Names and qualifications of personnel to be assigned to this project.
- c. Outline of recent projects completed that are directly related to this project. Consultant is required to demonstrate specific design and project expertise relating to the requirements of the Scope of Services. Provide a list and description of projects of similar scope and complexity completed within the last ten years. Identify how much experience the firm and subconsultant has had with public agencies, and working on projects funded through the Highway Bridge program (HBP).
- d. Qualifications of consultants, subcontractors, or joint venture firm, if appropriate.
- e. Client references from recent related projects, including name, address and phone number of individual to contact for referral.
- f. UDBE –Include an organization chart of UDBE involvement, if any.

2.5. Understanding of and Approach to the Project

- a. Summary of approach to be taken.
- b. Description of the organization and staffing to be used for the project.
- c. Indication of information and participation the proposer will require from County staff.

**2.6.    Fees**

- a. Propose fees to complete project as described under Project Scope broken out by task order. Also provide document production costs.

**SECTION 3.    PROJECT INFORMATION**

The Public Works Department for the County of San Luis Obispo is requesting a proposal for environmental services for “Five Bridge Painting Projects in San Luis Obispo County” which is funded through the Highway Bridge Preventative Maintenance Program and local matching funds.

The project includes partial removal of existing failing paint system and corrosion, and the application of a new painting system to all exposed structural steel surfaces on five County bridges. The proposed work will be limited to the structural steel members. Work will remain in the existing Right of Way. It may be necessary to place scaffolding in the creeks in order to access the structural steel members. This Bridge Preventative Maintenance Project will repair the existing paint systems and help protect the bridges from future corrosion.

The project sites proposed for maintenance are:

Stenner Creek Road at Stenner Creek – 49C0085;  
Tassajara Creek Road at Santa Margarita Creek – 49C0281;  
Buckley Road at East Branch of San Luis Obispo Creek – 49C0106;  
Lakeview Drive at Las Tablas Creek – 49C0391; and  
Toro Creek Road at Toro Creek – 49C0384.

**SECTION 4.    SCOPE OF SERVICES**

The intended outcome is for the Consultant to perform professional and environmental services necessary to prepare all environmental documents, reports, and permit application packages. The documents, reports, and applications shall meet all Federal, State, and County requirements in conformance with the Federal Highway Administration’s Highway Bridge Preventative Maintenance Program. The Project is facing a tight schedule and will require a dedicated team of environmental professionals to move documents forward for each project site in a concurrent manner.

The environmental services shall include but are not limited to, the following:

The preparation of Natural Environment Studies (NES) and Natural Environment Studies with Minimal Impact (NES-MI); Biological Assessments; Initial Site Assessment for Hazardous Materials; and the necessary California Environmental Quality Act (CEQA) document to satisfy the requirements of the project funded through the Federal Highway Administration’s Highway Bridge Preventative Maintenance Program.

#### 4.1 GENERAL REQUIREMENTS

All environmental documents prepared pursuant to this contract shall meet all of the requirements set forth in the following:

- ☐ California Environmental Quality Act (PRC 21000 et seq.)
- ☐ State CEQA guidelines (CCR, section 15000 et seq.)
- ☐ Endangered Species Act (16 USC 1531 et seq.)
- ☐ Clean Water Act (33 USC 1251 et seq.) (emphasis on sections 401 and 404)
- ☐ Clean Air Act (42 USC Section 7401 et seq.)
- ☐ Fish and Wildlife Coordination Act (16 USC 661-666)
- ☐ California Endangered Species Act (Fish and Game Code 2050 et seq.)
- ☐ Migratory Bird Treaty Act (16 USC 703-712)
- ☐ Federal Executive Order 11990 (Wetlands)
- ☐ Federal Executive Order 13112 (Invasive Species)

All documents produced for the project shall also meet the requirements of the California Department of Transportation and the Federal Highway Administration, including processing and document formatting requirements.

The County will retain responsibility for all final consultation, both informal and formal, with State and Federal agencies regarding project mitigation and compensation proposals.

Where the Consultant is required to prepare and submit studies, reports, plans, etc., to the County as required by this Scope of Work, these shall be submitted in draft as scheduled, and the opportunity provided for the County to direct revisions, prior to final submission.

#### County Expenditure of State and Federal Funds

This selection process and work performed hereunder shall be completed in accordance with applicable laws of the State of California, the California Transportation Commission (CTC), Caltrans, and FHWA, as administered by Caltrans Local Assistance.

This selection process and work performed hereunder shall be completed in accordance with the State of California and Federal Laws and Regulations.

#### Disadvantaged Business Enterprises

The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The provisions of Title 49, Part 23, Code of Federal Regulations (49 CFR 23) require that DBE's have an opportunity to participate in contracts funded through the Federal Highway Administration (FHWA).

The County of San Luis Obispo has established an Underutilized Disadvantaged Business Enterprise (UDBE) goal of 0%. In order to meet the above stated requirements, the following criteria have been established, and must be addressed prior to execution of a contract for the services requested in the subsequent site specific RFP:

1. The Consultant must submit a “UDBE Commitment” form and a “DBE Information” form prior to award of the contract.
2. The Consultant must submit a “Final Report – Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractor” form upon completion of the contract.

#### Agency Contact

The Consultant may establish direct contact with governmental regulatory and resource agencies and others for the purpose of obtaining information, expertise, and assistance in developing baseline data and resource inventories. The Consultant shall maintain a record of all such contacts and shall transmit copies of those records to the County on a regular basis.

The County will retain responsibility for all final consultation, both informal and formal, with State and Federal agencies regarding project mitigation and compensation proposals.

#### Submittals

Where the Consultant is required to prepare and submit studies, reports, plans, etc., to the County as required by this Scope of Services, these shall be submitted in draft as scheduled and the opportunity provided for the County to direct revisions, prior to final submission.

## **4.2      SPECIFIC REQUIREMENTS**

A field review and PES forms have already been completed. Based on the evaluation of the project sites as described during the field review, the appropriate documents to be prepared would be Categorical Exclusion (CE) Determinations with required technical studies, under Section 6004, 23 CFR 771 activity (d)(3). The CEs would satisfy the Federal Highway Administration requirements for the National Environmental Policy Act (NEPA).

The County will provide Rights of Entry, USFWS species lists (outdated, see below), the results of tests conducted on all bridges for lead-based paint, and copies of the PES forms.

As indicated on the PES forms, the following draft studies shall be prepared and provided to the County for review:

#### Natural Environment Study (NES) and Natural Environment Study with Minimal Impacts (NES-MI)

The proposed projects will involve work within Stenner Creek, Santa Margarita Creek, East Branch of San Luis Obispo Creek, Las Tablas Creek, and Toro Creek.

The County stated on the PES form that the potential for federally listed species to occur is unknown in the project areas. Federal species that could be present include California red-legged frog and bald eagle. Steelhead have been detected during initial field surveys conducted at Santa Margarita Creek. The projects require the preparation of a Natural Environment Study (NES) or a Natural Environment Study with Minimal Impacts (NES-MI). The studies should include an assessment of the entire project area, including potential impacts to sensitive habitat and endangered and threatened plant and animal species.

The findings should be summarized in a report which must include a species list acquired from U.S. Fish & Wildlife Service (USFWS). Species lists were obtained for each site; however, more than 180 days have passed since these lists were obtained. Caltrans requests that species lists be dated no more than 180 days from the date that the NES



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or NES-MI be submitted to their office for review. Each NES and NES-MI should also address the potential for impacts to wetlands. Impacts, both temporary and permanent, must be identified and quantified.

Each NES and NES-MI must also include discussions on how the proposed projects will comply with federal laws, acts and Executive Orders (EO) including but not limited to:

- ☐ EO 13112 – Invasive Species
- ☐ EO 11990 – Protection of Wetlands
- ☐ Migratory Bird Treaty Act
- ☐ Section 7 of the Federal Endangered Species Act

The above-referenced studies must be completed using the formats found in the Caltrans Standard Environmental Reference (<http://www.dot.ca.gov/ser/forms.htm>; <http://www.dot.ca.gov/ser/vol3/chap2.htm>).

Initial Site Assessment for Hazardous Materials

An initial site assessment for hazardous materials must be prepared for each site which discusses the results of lead-based paint testing.

Biological Assessment

For sites that have water year-round, a Biological Assessment must also be prepared to address potential impacts to federally listed species and critical habitat, both designated and proposed.

Consultation with USFWS and/or National Marine Fisheries Service will be required, with the level of consultation dependent on the level of potential impact.

The above-referenced studies must be completed using the formats found in the Caltrans Standard Environmental Reference (<http://www.dot.ca.gov/ser/forms.htm>; <http://www.dot.ca.gov/ser/vol3/chap2.htm>).

A Quality Control and Assurance for Biological Reports must be submitted with the completed report. This form can be found at [http://www.dot.ca.gov/dist05/planning/environmental\\_stewardship.htm](http://www.dot.ca.gov/dist05/planning/environmental_stewardship.htm).

Permits

The sites that have water year-round may require permits from Army Corps of Engineers (404), California Department of Fish and Game (1600), and California Regional Water Quality Control Board (401). The Consultant is responsible for preparing all permit applications associated with this project. The County will finalize the permit applications and apply for permits.

California Environmental Quality Act (CEQA)

All five project sites will require compliance with the California Environmental Quality Act (CEQA). The sites that have water year-round can be bundled into one Initial Study in order to determine whether or not the projects will have a significant effect on the environment. It is anticipated that these sites will require a Negative Declaration to comply with CEQA. For the sites that go dry during the summer months, it is anticipated that these sites will require a Categorical Exemption to comply with CEQA.

**ATTACHMENT A**  
**AGREEMENT FOR**  
**ENVIRONMENTAL SERVICES**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, herein called "COUNTY," and NAME OF CONSULTING FIRM, a corporation whose address is ADDRESS, herein called 'CONSULTANT.'

The COUNTY department responsible for administering this AGREEMENT is the Department of Public Works, and all written communications hereunder with the COUNTY shall be addressed to the Director of Public Works.

WHEREAS, the COUNTY has need for special services and advice with respect to the work described herein; and

WHEREAS, CONSULTANT warrants that it is specially trained, experienced, expert and competent to perform such special services;

**NOW, THEREFORE, IT IS AGREED** by the parties hereto as follows:

**ARTICLE 1.    SCOPE OF WORK.** CONSULTANT shall, at its own cost and expense, provide all the services, equipment and materials necessary to complete the work described in the CONSULTANT's Scope of Work, attached hereto as Exhibit A, and incorporated herein by this reference. All work shall be performed to the highest professional standard.

**ARTICLE 2.    TIME FOR COMPLETION OF WORK.** No work shall be commenced prior to CONSULTANT's receipt of the COUNTY's Notice to Proceed. All work shall be completed no later than DATE, provided, however, that extensions of time may be granted in writing by the Director of Public Works of San Luis Obispo County, which said extensions of time, if any, shall be granted only for reasons attributable to inclement weather, acts of God, or for other cause determined in the sole discretion of the Director of Public Works of San Luis Obispo County to be good and sufficient cause for such extensions.

**ARTICLE 3.    PAYMENT FOR SERVICES.**

A. **Compensation.**

1. COUNTY shall pay to CONSULTANT as compensation in full for all work required by this Agreement a sum not to exceed the total Agreement amount of \$XXXXX.00. CONSULTANT's compensation shall be based on actual services performed and costs incurred at the rates set forth for each task in the CONSULTANT's Cost Proposal attached hereto as Exhibit B, and incorporated herein by this reference. Progress payments will be made as set forth below based on compensable services provided and allowable costs incurred pursuant to this Agreement.

2. When the Cost Proposal included cost estimates for one or more tasks, the CONSULTANT shall obtain prior written approval for a revised task cost estimate from the COUNTY's Project Manager before exceeding any task cost estimate.

B. **Reports.** CONSULTANT shall submit to the COUNTY, on a monthly basis, a detailed statement of all services performed and all work accomplished under this Agreement since the CONSULTANT's last monthly statement, including the number of hours of work performed and the personnel involved. For the purpose of timely processing of invoices, the CONSULTANT's invoices are not regarded as received until the monthly report is submitted. Any anticipated problems in performing any future work shall be noted in the monthly reports. The CONSULTANT shall also promptly notify the County of any perceived need for a change in the scope of work or services.

C. **Invoices.** Billing invoices shall be based upon the CONSULTANT's Cost Proposal attached hereto as Exhibit B. Invoices shall detail the work performed on each task and each project as applicable. Invoices shall follow a format based upon the Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due the COUNTY.

D. **Federal Acquisition Regulations.** CONSULTANT understands and agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items. The CONSULTANT also agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to COUNTY. Any subcontract entered into by CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this paragraph by incorporating the provisions of this paragraph in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this paragraph.

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E. **Prompt Payment of Funds.** The COUNTY shall hold retainage from the CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the COUNTY, of the contract work, and pay retainage to the CONSULTANT based on these acceptances. The CONSULTANT, or subconsultant, shall return all monies withheld in retention from a subconsultant within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the COUNTY. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the COUNTY's prior written approval. Any violation of this provision shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subconsultant performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE CONSULTANT's and subconsultants.

F. **CONSULTANT's Assigned Personnel.** All work performed under this Agreement shall be performed by the CONSULTANT's personnel identified in the Organizational Chart, attached hereto as Exhibit C, and incorporated herein by this reference. Any changes to this Organizational Chart must be approved in writing by the COUNTY's Project Manager.

**ARTICLE 4. ACCOUNTING RECORDS.**

A. CONSULTANT shall maintain accounting records in accordance with generally accepted accounting principles. CONSULTANT shall obtain the services of a qualified bookkeeper or accountant to ensure that accounting records meet this requirement. CONSULTANT shall maintain acceptable books of accounts which include, but are not limited to, a general ledger, cash receipts journal, cash disbursements journal, general journal and payroll journal.

B. CONSULTANT shall record costs in a cost accounting system which clearly identifies the source of all costs. Agreement costs shall not be co-mingled with other project costs, but shall be directly traceable to contract billings to the COUNTY. The use of worksheets to produce billings shall be kept to a minimum. If worksheets are used to produce billings, all entries should be documented and clearly traceable to the CONSULTANT's cost accounting records.

C. All accounting records and supporting documentation shall be retained for a minimum of five (5) years or until any audit findings are resolved, whichever is later. CONSULTANT shall safeguard the accounting records and supporting documentation.

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D. CONSULTANT shall make accounting records and supporting documentation available on demand to the COUNTY and its designated auditor for inspection and audit. Disallowed costs shall be repaid to the COUNTY. The COUNTY may require having the CONSULTANT's accounting records audited, at CONSULTANT's expense, by an accountant licensed by the State of California. The audit shall be presented to the County Auditor-Controller within thirty (30) days after completion of the audit.

E. The State, the State auditor, FHWA or any authorized representative of the Federal Government having jurisdiction under Federal law or regulations (including the basis of Federal Funding in whole or in part) shall have access to any book, record, any documents of the CONSULTANT that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The CONSULTANT must also maintain records for five years from the date of final payment.

F. Any subcontract entered into by CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.

**ARTICLE 5. NON-ASSIGNMENT OF AGREEMENT.** Inasmuch as this Agreement is intended to secure the specialized services of the CONSULTANT, CONSULTANT may not assign, transfer, delegate or sublet any interest herein without the prior written consent of COUNTY and any such assignment, transfer, delegation, or sublease without the County's prior written consent shall be considered null and void.

**ARTICLE 6. INSURANCE.** CONSULTANT, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable) and shall provide products/completed operations coverage for four (4) years following completion of CONSULTANT's work under this Agreement and acceptance by the County. Any failure to comply with reporting provisions(s) of the policies referred to above shall not affect coverage provided to the County, its officers, employees, volunteers and agents. For purposes of the insurance policies required hereunder, the term "County" shall include officers, employees, volunteers and agents of the County of San Luis Obispo, California, individually or collectively.

A. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.** The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County:

1. **COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").** Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

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\$1,000,000 each occurrence (combined single limit);  
\$1,000,000 for personal injury liability;  
\$1,000,000 aggregate for products-completed operations; and  
\$1,000,000 general aggregate.

The general aggregate limits shall apply separately to CONSULTANT's work under this Agreement.

2. **BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").** Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability Coverage, Code 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than One-million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage. Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. CONSULTANT shall not provide a Comprehensive Automobile Liability policy which specifically lists scheduled vehicles without the express written consent of County.

3. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC / EL").** This policy shall include at least the following coverages and policy limits:

- a. Workers' Compensation insurance as required by the laws of the State of California; and
- b. Employer's Liability Insurance Coverage B with coverage amount not less than one-million (\$1,000,000) dollars each accident / Bodily Injury (herein "BI"); one-million (\$1,000,000) dollars policy limit BI by disease; and, one-million (\$1,000,000) dollars each employee BI disease.

4. **PROFESSIONAL LIABILITY INSURANCE POLICY ("PL").** This policy shall cover damages, liabilities, and costs incurred as a result of CONSULTANT's professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One-Million Dollars (\$1,000,000) per claim, including the annual aggregate for all claims (such coverage shall apply during the performance of the services under this Agreement and for two (2) years thereafter with respect to incidents which occur during the performance of this Agreement). CONSULTANT shall notify the County if any annual aggregate is eroded by more than seventy-five percent (75%) in any given year.

B. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.** Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by CONSULTANT and approved by the County before work is begun pursuant to this Agreement. At the option of the County, CONSULTANT shall either reduce or eliminate such deductibles or self-insured retentions as respect the County, its officers, employees, volunteers and agents, or shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

C. **ENDORSEMENTS.** All of the following clauses and endorsements, or similar provisions, are required

**ENVIRONMENTAL SERVICES FOR FIVE BRIDGE PAINTING PROJECTS IN SAN LUIS OBISPO COUNTY**

to be made a part of insurance policies indicated in parentheses below:

1. A "Cross Liability", "Severability of Interest" or "Separation of Insureds" clause (CGL & BAL);
2. The County of San Luis Obispo, its officers, employees, volunteers and agents are hereby added as additional insureds with respect to all liabilities arising out of CONSULTANT's performance of work under this Agreement (CGL & BAL);
3. If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL & BAL)
4. This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL, BAL, & PL);
5. No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to County at the address set forth below (CGL, BAL, WC /EL & PL);
6. CONSULTANT and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers and agents for any loss arising under this Agreement (CGL); and
7. Deductibles and self-insured retentions must be declared (All Policies).

D. **ABSENCE OF INSURANCE COVERAGE.** County may direct CONSULTANT to immediately cease all activities with respect to this Agreement if it determines that CONSULTANT fails to carry, in full force and effect, all insurance policies with coverage's at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered CONSULTANT's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to CONSULTANT.

E. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.** Prior to commencement of work under this Agreement, and annually thereafter for the term of this Agreement, CONSULTANT, or each of CONSULTANT's insurance brokers or companies, shall provide County a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverage's. All of the insurance companies providing insurance for CONSULTANT shall have, and provide evidence of, a Best Rating Service rate of A-FSCVII or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

PROJECT MANAGER, Public Works Department  
Room 207, County Government Center

San Luis Obispo CA 93408

**ARTICLE 7.      INDEMNIFICATION.**

A.      CONSULTANT shall defend, indemnify and hold harmless the County, its officers, agents, and employees from any and all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses (hereafter, collectively "claims") that may be asserted by any person or entity, and that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. The parties agree that, in addition to the CONSULTANT's general and professional duties of care, the CONSULTANT has a duty of care to act in a manner consistent with the terms of this Agreement. The parties acknowledge that, in addition to whatever other acts or omissions may constitute negligence under applicable law, any act or omission of CONSULTANT which constitutes a breach of any duty or obligation under, or pursuant to, this Agreement shall at a minimum constitute negligence, and may constitute recklessness or willful conduct if so warranted by the facts.

B.      The preceding paragraph applies to any and all such claims, regardless of the nature of the claim or theory of recovery. For purposes of the paragraphs found in this Article 7 of the Agreement, "CONSULTANT" shall include the CONSULTANT, and/or its agents, employees, subcontractors, or other independent contractors hired, by, or working under, CONSULTANT.

C.      It is the intent of the parties to provide the COUNTY the fullest indemnification, defense, and "hold harmless" rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Agreement and the remaining language shall be given full force and effect. Nothing contained in the foregoing indemnity provisions shall be construed to require CONSULTANT to indemnify COUNTY against any responsibility or liability in contravention of Civil Code 2782 or 2782.8.

**ARTICLE 8.      CONSULTANT'S RESPONSIBILITY FOR ITS WORK.**

A.      CONSULTANT has been hired by the COUNTY because of CONSULTANT's specialized expertise in performing the work described in the attached Scope of Work, Exhibit A. CONSULTANT shall be solely responsible for such work. The COUNTY's review, approval and/or adoption of any designs, plans, specifications or any other work shall be in reliance on CONSULTANT's specialized expertise and shall not relieve the CONSULTANT of its sole responsibility for the work. The COUNTY is under no duty or obligation to review or verify the appropriateness, quality or accuracy of any designs, plans, specifications or any other work, including but not limited to, any methods, procedures, tests, calculations, drawings or other information used or created by CONSULTANT in performing any work under this Agreement.



B. All information which CONSULTANT receives from COUNTY should be independently verified by CONSULTANT. CONSULTANT should not rely upon such information unless it has independently verified its accuracy. The only exception to the foregoing arises when the COUNTY has expressly stated in writing that certain information may be relied upon by the CONSULTANT without the CONSULTANT's independent verification. In such event, the CONSULTANT is still obliged to promptly notify the COUNTY whenever the CONSULTANT becomes aware of any information that is inconsistent with any information which the COUNTY has stated may be relied upon by the CONSULTANT.

C. Pursuant to the provisions of this Article, the CONSULTANT is responsible for all work under this Agreement, including the work performed by any subcontractors or any other independent contractors hired by, or working under, the CONSULTANT.

**ARTICLE 9. INSURANCE AND INDEMNIFICATION AS MATERIAL PROVISIONS.** The parties expressly agree that the indemnification and insurance clauses in this Agreement are an integral part of the performance exchanged in this Agreement. The compensation stated in this Agreement includes compensation for the risks transferred to CONSULTANT by the indemnification and insurance clauses.

**ARTICLE 10. CONSULTANT'S ENDORSEMENT ON REPORTS, ETC.** CONSULTANT shall endorse all reports, maps, plans, documents, materials, and other data in accordance with applicable provisions of the laws of the State of California.

**ARTICLE 11. DOCUMENTS, INFORMATION, AND MATERIALS OWNERSHIP.**

A. All documents, information and materials of any and every type prepared by the CONSULTANT pursuant to this Agreement shall be the property of the COUNTY. Such documents shall include but not be limited to data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT in performing work under this Agreement, whether completed or in process. The CONSULTANT shall assume no responsibility for the unintended use by others of any such documents, information, or materials on project(s) which are not related to the scope of services described under this Agreement.

B. CONSULTANT understands and agrees that the applicable patent rights provisions described in 41 CFR 1-91, shall be used to determine rights to inventions

C. Any subcontract entered into by CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.

**ARTICLE 12. TERMINATION OF AGREEMENT WITHOUT CAUSE.** COUNTY may terminate this Agreement at any time by giving the CONSULTANT 20 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Other than payments for services satisfactorily rendered prior to the effective date of said termination, CONSULTANT shall be entitled to no further compensation or payment of any type from the COUNTY.

**ARTICLE 13. TERMINATION OF AGREEMENT FOR CAUSE.** If CONSULTANT fails to perform CONSULTANT's duties to the satisfaction of the COUNTY, or if CONSULTANT fails to fulfill in a timely and professional manner CONSULTANT's obligations under this Agreement or if CONSULTANT shall violate any of the terms or provisions of this Agreement or if CONSULTANT, CONSULTANT's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the COUNTY, then COUNTY shall have the right to terminate this Agreement effective immediately upon the COUNTY giving written notice thereof to the CONSULTANT. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. CONSULTANT shall be paid for all work satisfactorily completed prior to the effective date of such termination. If COUNTY's termination of the Agreement for cause is defective for any reason, including but not limited to COUNTY's reliance on erroneous facts concerning CONSULTANT's performance, or any defect in notice thereof, this Agreement shall automatically terminate without cause on the twentieth day following the COUNTY's written notice of termination for cause to the CONSULTANT, and the COUNTY's maximum liability shall not exceed the amount payable to CONSULTANT under Article 12 above.

**ARTICLE 14. COMPLIANCE WITH LAWS.** CONSULTANT shall comply with all Federal, State, and local laws and ordinances that are applicable to the performance of the work of this Agreement. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

**ARTICLE 15. COVENANT AGAINST CONTINGENT FEES.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percent, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, COUNTY shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the Agreement

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price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**ARTICLE 16. NONDISCRIMINATION.** CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement. The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

**ARTICLE 17. DISPUTES & CLAIMS.**

A. Notice of Potential Claim. The CONSULTANT shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the COUNTY, or for the happening of any event, thing, occurrence, or other cause, unless CONSULTANT has provided the COUNTY with timely written Notice of Potential Claim as hereinafter specified. The written Notice of Potential Claim shall set forth the reasons for which the CONSULTANT believes additional compensation will or may be due, the nature of the cost involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the COUNTY prior to the time that the CONSULTANT shall have performed the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the COUNTY, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. It is the intention of this paragraph that differences between the parties relating to this Agreement be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The CONSULTANT hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written Notice of Potential Claim as herein required was filed with the COUNTY Director of Public Works.

B. Processing of Actual Claim. In addition to the above requirements for Notice of Potential Claim, a detailed, Notice of Actual Claim must be submitted in writing to the COUNTY on or before the date of final payment under this Agreement. All such claims shall be governed by the procedures set forth in section 20104.2 and 20104.4 of the Public Contract Code, except that the word "claim" as used in said sections shall be construed as referring to any claim relating to this Agreement. The CONSULTANT shall not be entitled to any additional compensation unless CONSULTANT has (1) provided the COUNTY with a timely

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written Notice of Actual Claim and (2) followed the procedures set forth in Public Contract Code section 20104.2 and 20104.4.

C. Claim is No Excuse. Neither the filing of a Notice of Potential Claim or of a Notice of Actual Claim, nor the pendency of a dispute or claim, nor its consideration by the COUNTY, shall excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

**ARTICLE 18. CONSULTANT IS AN INDEPENDENT CONTRACTOR.** It is expressly understood that in the performance of the services herein provided, CONSULTANT shall be, and is, an independent contractor, and is not an agent or employee of COUNTY. CONSULTANT has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of the services rendered hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with Social Security, withholding, and all other regulations governing such matters.

**ARTICLE 19. ENTIRE AGREEMENT AND MODIFICATION.** This Agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. CONSULTANT shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Any changes increasing CONSULTANT's compensation and/or benefits must be approved by the COUNTY's Board of Supervisors; any other changes may be signed by the County Director of Public Works on behalf of the COUNTY. CONSULTANT specifically acknowledges that in entering into and executing this Agreement, CONSULTANT relies solely upon the provisions contained in this Agreement and no others. If there is any conflict between the language in the body of this Agreement and any exhibits attached hereto, the body of this Agreement shall take precedence.

**ARTICLE 20. ENFORCEABILITY.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**ARTICLE 21. WARRANTY OF CONSULTANT.** CONSULTANT warrants that CONSULTANT and each of the personnel employed or otherwise retained by CONSULTANT for work under this Agreement are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

**ARTICLE 22. SUBCONTRACTORS.**

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- A. Other than work designated in Exhibits A and B to be performed by other persons or entities, the CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the COUNTY. In the event the COUNTY provides written authorization for work to be performed by a subcontractor, the use of the words "subcontractor" and "subcontract" in this Article shall refer to such authorized subcontracting to a subcontractor of the first tier or any other tier.
- B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the County and any subcontractors, and no subcontract shall relieve the CONSULTANT of his/her responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the COUNTY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its subcontractors is an independent obligation from the COUNTY's obligation to make payments to the CONSULTANT.
- C. Any subcontract entered into by CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.
- D. CONSULTANT shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the CONSULTANT by the COUNTY.
- E. Any substitution of subcontractors must be approved in writing by the COUNTY's Project Manager in advance of assigning work to a substitute subcontractor.
- F. For purposes of this Agreement, the term "subcontractor" includes subconsultants.

**ARTICLE 23. APPLICABLE LAW AND VENUE.** This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**ARTICLE 24. NOTICES.** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to the County at:

Mr. Paavo Ogren, Director  
San Luis Obispo County  
Department of Public Works

County Government Center, Room 207  
San Luis Obispo, CA 93408

and to the CONSULTANT:

INSERT ADDRESS

**ARTICLE 25. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS.** Pursuant to Government Code section 7550, if the total cost of this Agreement is over \$5,000, the CONSULTANT shall include in all final documents and in all written reports submitted a written summary of costs, which shall set forth the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such documentation or written report. The Agreement and subagreement numbers and dollar amounts shall be contained in a separate section of such document or written report.

**ARTICLE 26. CONFIDENTIALITY OF DATA.**

- A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which are designated confidential by the COUNTY and made available to the CONSULTANT in order to carry out this Agreement, shall be protected by the CONSULTANT from unauthorized use and disclosure, and shall not be made available to any individual or organization by CONSULTANT without the prior written approval of COUNTY.
- B. Permission to disclose information on one occasion, or public hearing held by the COUNTY relating to this Agreement, shall not authorize the CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. All information related to the construction estimate is confidential, and shall not be disclosed by the CONSULTANT to any entity other than the COUNTY.
- D. Any subcontract entered into by CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.

**ARTICLE 27. RESTRICTIVE COVENANT.** CONSULTANT agrees that he will not, during the continuance of this Agreement, perform or otherwise exercise the services described in Exhibit A for anyone except for the COUNTY, unless and until said COUNTY waives this restriction.

**ARTICLE 28. CERTIFICATIONS.** A "Certification of Consultant" and a "Certification of Local Agencies Highway Department" are attached hereto as Exhibits D and E respectively, and are incorporated by reference and made a part of this Agreement. CONSULTANT must properly complete, execute, and return these forms to COUNTY as a pre-condition to the execution of this Agreement.

**ARTICLE 29. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION.**

A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."

B. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The CONSULTANT or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the COUNTY deems appropriate.

C. The COUNTY has established an underutilized DBE (UDBE) goal, for this Agreement of %. The CONSULTANT must meet the UDBE goal or document a good faith effort to meet the goal.

D. The "Notice to Proposers Disadvantaged Business Enterprise Information," "UDBE Commitment," "Good Faith Effort," "DBE Information," and "Proposer's List of Subcontractor" forms are attached hereto as Exhibits F, G, H, I and J respectively, and are hereby incorporated by reference and made part of this Agreement. CONSULTANT must properly complete, execute, and return these forms to COUNTY as a pre-condition to the execution of this Agreement.

E. If a UDBE subcontractor is unable to perform, the CONSULTANT must make a good faith effort to replace him/her with another UDBE subcontractor, if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Native Americans, Asian-Pacific Americans, or Women.

F. Any subcontract entered into by CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.

G. DBE Records (Applicable to both DBE and UDBE subcontractors)

1. The CONSULTANT shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor,

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regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

2. Upon completion of all work under this Agreement, a summary of these records shall be prepared and submitted on the Caltrans form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," certified correct by the CONSULTANT and shall be furnished to the COUNTY's Project Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form is submitted to the COUNTY's Project Manager.

H. If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the CONSULTANT in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the CONSULTANT in writing with the date of certification. Any changes to the DBE certification status of any subcontractor should be reported to the COUNTY's Project Manager within 30 days.

**ARTICLE 30. QUALITY CONTROL AND QUALITY ASSURANCE.** The CONSULTANT shall provide a description of its Quality Control procedure. The process shall be implemented for all facets of work and a QC-QA statement and signature shall be placed on all submittals to the COUNTY.

**ARTICLE 31. CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR.**

A. If claims are filed against the COUNTY by the COUNTY's construction contractor or any other third party that realtes in any way to any subject, plans, designs, or other work within the CONSULTANT's Scope of Work under this Agreement, and additional information or assistance from the CONSULTANT's personnel is requested by the COUNTY in order to evaluate or defend against such claims, CONSULTANT agrees to cooperate with and provide timely response to any reasonable requests for information submitted to CONSULTANT by the COUNTY relating to such claims. To the extent the information requested by the COUNTY only seeks copies of documents or other factual information relating to work performed by CONSULTANT, the CONSULTANT will only be compensated for any clerical costs associated with providing the COUNTY the requested factual information.

B. CONSULTANTs personnel that the COUNTY considers essential to assist in defending against such claims will be made available for consultation with the COUNTY upon reasonable notice from the COUNTY. In the event the expert opinions of the CONSULTANT's personnel is sought by the COUNTY



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through such consultation or through testimony, and only in such event, such consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the CONSULTANT's personnel services under this Agreement. In the event the testimony of any of CONSULTANT's personnel are sought by another party, the CONSULTANT reserves the right to charge other party a different rate for deposition or trial testimony.

C. Services of the CONSULTANT's personnel in connection with the COUNTY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to finally resolve the claims.

D. Any subcontract entered into by CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.

**ARTICLE 32. NATIONAL LABOR RELATIONS BOARD CERTIFICATION.** In accordance with Public Contract Code Section 10296, the CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the CONSULTANT within the immediately preceding two-year period, because of the CONSULTANT's failure to comply with an order of a federal court that orders the CONSULTANT to comply with an order of the National Labor Relations Board.

**ARTICLE 33. EVALUATION OF CONSULTANT.** The CONSULTANT's performance will be evaluated by the COUNTY. A copy of the evaluation will be sent to the CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

**ARTICLE 34. DEBARMENT AND SUSPENSION CERTIFICATION.**

A. The CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter

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involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed in writing to the COUNTY, prior to CONSULTANT's execution of this Agreement.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

**ARTICLE 35. CONFLICT OF INTEREST.**

A. The CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may be affected by the outcome of this Agreement, or any ensuing COUNTY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing COUNTY construction project, which will follow.

B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

C. Any subcontract entered into by CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.

D. The CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of one or more of the same persons through joint-ownership, or otherwise.

E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this Agreement shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement.

**ARTICLE 36. REBATES, KICKBACK, OR OTHER UNLAWFUL CONSIDERATION.** The CONSULTANT warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**ARTICLE 37. NONLOBBYING CERTIFICATION.**

A. The CONSULTANT certifies to the best of his/ her knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. This form is attached hereto as Exhibit K and incorporated herein by this reference.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

**IN WITNESS THEREOF**, COUNTY and CONSULTANT have executed this Agreement on the day and year first hereinabove set forth.

IN WITNESS THEREOF, the parties hereto have executed this Agreement, and this Agreement shall become effective on the date shown signed by the County of San Luis Obispo.

COUNTY OF SAN LUIS OBISPO

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chairperson of the Board  
County of San Luis Obispo  
State of California

**ATTEST:**

\_\_\_\_\_  
County Clerk and Ex-Officio Clerk of the  
Board of Supervisors, County of San Luis Obispo,  
State of California

Date: \_\_\_\_\_

CONSULTING FIRM

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGAL EFFECT:**

WARREN R. JENSEN  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

Date: \_\_\_\_\_